

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

GARY L. HUGHBANKS, JR.,

:

Petitioner,

Case No. 1:07-cv-111

:

-vs-

Magistrate Judge Michael R. Merz

STUART HUDSON, Warden,

:

Respondent.

ORDER GRANTING UNOPPOSED MOTION FOR EVIDENTIARY HEARING

This capital habeas corpus case is before the Court on Petitioner's Motion for Evidentiary Hearing (Doc. No. 81). The sole witness proposed in this Motion is Dr. Robert Smith, whose affidavit was presented in state post-conviction proceedings, but who was not permitted to testify live in those proceedings because Petitioner's motion for a hearing was denied in its entirety.

The Motion was filed on July 7, 2009, and has not been opposed by Respondent; the time for opposition has expired. This alone could be cause for granting the Motion under S. D. Ohio Civ. R. 7.2(a)(2). The Court finds in addition that the Motion satisfies the requirements of 28 U.S.C. § 2254(e)(2).

Accordingly, the Motion for Evidentiary Hearing is granted. This is without prejudice to the Court's determination of Petitioner's Motion for Supplementation of the Record (Doc. No. 87)

which will be ripe for decision on September 1, 2009, or whenever Petitioner timely files a reply memorandum.

August 26, 2009.

s/ **Michael R. Merz**
United States Magistrate Judge